

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WT Docket No. 01-72
Petition for Rulemaking)	

To: The Commission

**REPLY COMMENTS OF THE CELLULAR
TELECOMMUNICATIONS & INTERNET ASSOCIATION ON ITS
PETITION FOR A RULEMAKING TO ESTABLISH FAIR
LOCATION INFORMATION PRACTICES**

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On November 22, 2000, the Cellular Telecommunications & Internet Association (“CTIA”)¹ requested that the Federal Communications Commission (the “Commission”) commence a rulemaking proceeding to implement Sections 222(f) & (h) of the Communications Act of 1934, as amended, and adopt CTIA’s proposed fair location information privacy principles. On March 16, 2001, the FCC published a Public Notice seeking comment on the proposal.² CTIA was gratified by the widespread support for its proposed privacy principles and the general consensus in favor of the Commission commencing a rulemaking to adopt location privacy principles separate from its pending

¹ The Cellular Telecommunications Industry Association recently completed its merger with merger with the Wireless Data Forum to form the Cellular Telecommunications & Internet Association. It is now the international organization of the wireless communications industry with its membership encompassing wireless carriers, network service providers, wireless device and infrastructure equipment manufacturers and vendors, computer software and hardware developers, and information services content providers.

² In the Matter of Petition of the Cellular Telecommunications & Internet Association Petition for a Rulemaking to Establish Fair Location Information Practices, Notice of Request for Comments, DA –1-696, WT Docket No. 01-72 (Mar. 16, 2001).

docket on Customer Proprietary Network Information (“CPNI”). CTIA submits these Reply Comments to urge the Commission to move forward with the rulemaking and to adopt the CTIA location privacy principles as rules.

I. SUMMARY OF COMMENTS

A. Assuring Customers of the Privacy of Location Information Is Critical for Adoption of Location-Based Services

There were no comments disputing the fundamental premise of CTIA’s Petition: privacy concerns regarding location information must be addressed if new services and applications are to be accepted by consumers.³ Indeed, while the comments revealed an impressive array of location-based technologies and services that either are available on the market already or are soon to be released,⁴ commenters readily recognized the need to assure customers that privacy protections will be accorded to location information.⁵ The only

³ Petition of the Cellular Telecommunications Industry Association for a Rulemaking to Establish Fair Location Information Practices (“CTIA Petition”) at 5.

⁴ See e.g., Comments of AT&T Wireless Services, Inc., (“AT&T Wireless”) at 2 (“In the future, AT&T will utilize its network to offer subscribers the convenience and advantages of location-based services.”); Comments of Cingular Wireless LLC at 1 (“A small number of location-based services that offer significant benefits to consumers are now being offered with many more currently in the development stage.”); Comments of Dobson Communications Corporation at 1-2 (“Dobson also foresees the possible future use of this type of technology to provide location-specific services to its customers, in conjunction with third-party content providers and merchants.”); Comments of Grayson Wireless, a Division of Allen Telecom at 2 (describing Goemetrix® network-based wireless location system); Initial Comments of the Location Privacy Association at 4 (Airbiquity’s GPS Accessory and QUALCOMM’s gpsOne Technology available today).

⁵ See e.g., Comments of Nokia, Inc., at 2 (“Customers will be understandably reluctant to take advantage of location-based services without strong assurances that data about their location, both real time and historic, remains in their control at all times.”); Comments of Verizon Wireless at 4 (“Verizon Wireless recognizes that [location tracking] is a capability that reaches deep into customers’ personal and business lives, and it appreciates the seriousness of these privacy concerns.”).

question raised in the comments was the preferred means to achieve the goal – through the rulemaking proposed by CTIA, or by inaction.

B. A Rulemaking is Necessary to Establish Uniform Treatment of Location Information and to Preempt Inconsistent State Law

The Comments show widespread support -- from manufacturers to carriers to third party applications providers to privacy groups to trade associations -- to commence a rulemaking now to establish fair location information practices.⁶ The reasons vary, but in sum, initiating a rulemaking now will:

- Inform consumers and give them confidence that location information will be protected wherever they may use their mobile device;
- Foster adoption of location-based services and competition;
- Assist service providers to avoid costs of compliance with subsequent rules that may not permit information collection practices adopted today; and
- Ensure a national framework for protection of location information by preempting inconsistent State laws.

Dobson Communications Corporation sees the benefit of acting now by putting a regulatory framework in place because it will allow “both service providers and consumers [to] understand the manner in which location information is used.”⁷ Not only does this make for an educated consumer, but it fosters choice in services and between service providers and

⁶ See generally Comments of the Center for Democracy and Technology (“CDT”); Comments of Cingular Wireless LLC; Comments of Dobson Communications Corporation; Comments of the Electronic Privacy Information Center; Comments of Ericsson; Initial Comments of the Location Privacy Association; Comments of Nokia, Inc.; Comments of the Rural Telecommunications Group; Comments of SCC Communications Corp.; Comments of the Wireless Location Industry Association; Comments of XNS Public Trust Organization (“XNSORG”).

⁷ Comments of Dobson Communications Corporation at 2.

is pro-competitive as CDT notes.⁸ Indeed, even though AT&T Wireless is concerned that a rulemaking may be premature, it acknowledges that “[r]ather than proceed in an uncertain environment, many consumers may forego accessing the valuable services that location-based applications of wireless technologies make available to them.”⁹

Putting a regulatory framework in place at the outset when services are nascent also has the benefit of avoiding the costs of compliance if rules or statutory interpretation later change the rules of the game. Cingular Wireless notes that “[c]lear rules governing [location services] are necessary to avoid the inevitable costs that would be incurred by the wireless industry and by consumers if rules were not promulgated until after systems were already implemented.”¹⁰ CDT concurs, stating that “[i]f the Commission delays issuing implementing rules, the wireless location industry could be forced to retrofit its systems when rules are developed.”¹¹ Moreover, CDT notes that consumers could be forced to later change their practices and expectations by delayed rules.¹²

Consumer expectations and confidence are key. As CTIA noted in its Petition, a rulemaking is necessary to address consumers’ privacy expectations especially in a roaming environment.¹³ That is, CTIA does not believe that consumers will understand that their location information may be more or less protected depending upon which State they are in when using their mobile device.

⁸ Comments of the CDT at 7 (rulemaking now is necessary “to ensure competition in a nascent market”).

⁹ Comments of AT&T Wireless at 4.

¹⁰ Comments of Cingular Wireless LLC at 1-2.

¹¹ Comments of the CDT at 8.

¹² *Id.*

¹³ CTIA Petition at 3.

Accordingly, the preemption of inconsistent State laws is a significant reason to pursue this rulemaking. There is no doubt that the Commission has preemption authority.¹⁴ Indeed, the Commission itself has made clear that it will exercise its preemption authority with respect to inconsistent state CPNI rules.¹⁵

The Comments generally support the need for preemption. Dobson Communications Corporation notes that “[m]any states have either adopted or are considering adopting privacy legislation, which would make compliance by regional operators such as Dobson difficult to achieve.”¹⁶ Sprint PCS believes that “[t]he most important step the Commission can take at this point is to preempt states from regulating wireless location information practices.”¹⁷ As Sprint PCS notes, “[s]ome states are considering legislation that would prohibit carriers from even offering location-based services to their customers.”¹⁸ Already, as Sprint PCS notes, the Oregon Legislature has introduced H.B. 3345, which would prohibit a CMRS carrier from disclosing location information to any person other than law enforcement and 911 operators.¹⁹

Those that disagree with commencing a rulemaking now do so for two reasons: concern that the Commission will over-regulate with highly prescriptive rules and thereby

¹⁴ *California v. FCC*, 39 F.3d 919, 932 (9th Cir. 1994), *cert. Denied* 115 S. Ct. 1427 (1995) (affirmed Commission’s preemption of state CPNI rules).

¹⁵ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Order on Reconsideration and Petitions for Forbearance*, 14 FCC Rcd 14409, 14465-67 (1999).

¹⁶ Comments of Dobson Communications Corporation at 4.

¹⁷ Sprint PCS Comments at 14; *see also* Comments of Verizon Wireless at 10 (“The importance of consumer privacy and the seamless nature of mobile location-based services demand a single national standard”).

¹⁸ Sprint PCS Comments at 14.

¹⁹ Sprint PCS Comments at 14-15.

choke off the nascent location services industry or a belief that self-regulation is the preferred mechanism for ensuring privacy.²⁰ Yet, CTIA's Petition actually embraces both views as the Petition plainly asks the Commission to adopt flexible rules implementing CTIA's fair location information principles -- rules that would address consumers' privacy expectations and provide a safe harbor to service providers that adopted them.

Indeed, CTIA would oppose, for example, the Commission prescribing a detailed form of notice or consent that should be given if the principles were adopted. As described below in more detail, the Commission's rules adopting CTIA's fair location information practices would need do no more, for example, than require location service providers to inform their customers of their practices for the collection, use, disclosure and protection of location information. The manner and means of notice can and should be left to the service provider who has the direct relationship with the customer.

Accordingly, so long as the Commission proceeds with high-level rules, the concerns should be mollified and all the benefits of establishing a location privacy framework can be achieved.

C. Rulemaking Separate from CPNI and E9-1-1 Dockets

First, there is little dispute that the rulemaking should be conducted separate from the CPNI docket. Most commenters acknowledge that location privacy is an issue "uniquely wireless."²¹ The Location Privacy Association and the Wireless Location Industry

²⁰ Comments of AT&T Wireless at 2 ("Because location-based applications of wireless technologies are just beginning to be developed, now is not an appropriate time for the Commission to adopt specific rules."); Comments of the Direct Marketing Association at 3 ("The DMA believes that industry self-regulation generally is more effective than cumbersome and inflexible government rules."); Comments of Verizon Wireless at 1-2 (supporting CTIA principles as cornerstone of any policy but does not believe regulations "necessary at this time.").

²¹ Comments of Dobson Communications Corporation at 3.

Association agree, with the Location Privacy Association noting that the “unique elements of call location privacy issues warrant the separate proceeding urged by CTIA.”²²

Dobson Communications Corporation also correctly points out that the Commission will be better able to timely resolve the issues involved with wireless location without the delays caused by unrelated matters in the CPNI docket.²³ Privacy advocates also agree, believing a more focused discussion on location privacy can be had within the context of this separate proceeding.²⁴

Second, the Commission, of course, is familiar with location service enabling technologies through its Enhanced 911 docket.²⁵ However, a location privacy rulemaking should not be a forum for addressing 911 implementation or related issues.²⁶ Indeed, fears

²² Comments of the Location Privacy Association at 3; Comments of the Wireless Location Industry Association at 3.

²³ Comments of Dobson Communications Corporation at 3; *see also* Comments of the Rural Telecommunications Group at 1 (“the Commission should commence a stand-alone rulemaking proceeding.”).

²⁴ Comments of CDT at 9; Comments of the Electronic Privacy Information Center at 2.

²⁵ *See* Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Notice of Proposed Rulemaking, 9 FCC Rcd 6170 (1994) and subsequent proceedings.

²⁶ Concerns regarding the implementation of wireless E911 capabilities are more properly raised in CC Docket 94-102. Accordingly, the Commission should reject the request of the Texas 9-1-1 Agencies to expand the scope of this rulemaking to require ALL members of CTIA to “provide available subscriber information in response to a PSAP exigent circumstances request for an in progress 9-1-1 emergency call.” Comments of the Texas 9-1-1 Agencies at 4. This request detracts from the goal of this proceeding, which is to provide a framework for fair location information practices in a commercial environment. What is more, the disclosure of the business or personal subscriber’s billing address would seem to have little to do with locating the user of a mobile device seeking emergency assistance.

raised by SCC Communications²⁷ or others that the CTIA Petition would affect the specific exception under the Wireless Communications and Public Safety Act of 1999 (“WCPSA”) to permit disclosure of location information for emergency situations are misplaced.²⁸ To best address these concerns, issues associated with wireless E 9-1-1 services should be addressed within CC Docket 94-102, and not within the requested location privacy rulemaking.²⁹

D. Services and Providers to be Covered by Rulemaking

Several commenters have implied that the Commission lacks jurisdiction to reach other than CMRS providers in this rulemaking. Ericsson urges the Commission to consider privacy rules that apply to other providers of location services besides carriers because such “overlay providers are not subject to regulation” like wireless carriers.³⁰ Sprint PCS likewise is concerned that the Commission “could adopt national rules, but they would extend only to wireless carriers and not to the hundreds of entities that will have access to location information.”³¹

Nonetheless, there is widespread support in the Comments for treating all providers, services and technologies the same when it comes to location privacy because, as EPIC notes, “[t]he average consumer is unlikely to know (or care) that a cellular phone is subject to one regulatory regime while a wireless Internet device is subject to another (or none at all).”³²

²⁷ See Comments of SCC Communications Corp. at 2.

²⁸ Wireless Communications and Public Safety Act of 1999, Oct. 26, 1999, P.L. 106-81, § 2, 113 Stat. 1286, adding new Section 222(d).

²⁹ See also Comments of Location Privacy Association at 5 (location privacy proceeding should not be used as a pretext to delay E9-1-1 implementation); Comments of SiRF Technology at 3 (concern regarding accuracy of E9-1-1 technology).

³⁰ Comments of Ericsson at 2.

³¹ Sprint PCS Comments at 7.

³² Comments of EPIC at 3.

EPIC specifically calls on the Commission to address this jurisdictional issue in the rulemaking to determine “whether any provider [that] intends to offer or is developing technology that will collect location information” should be covered by the rule.³³ CTIA agrees.

II. CTIA’S LOCATION PRIVACY PRINCIPLES

The Comments generally recognize that CTIA’s proposed privacy principles rely on well-established fair information practices.³⁴ CTIA’s privacy principles provide for notice, consent, security and integrity of information, and technology neutral rules. Some commenters urged that the principles also include enforcement, access, and accuracy. CTIA addresses these issues below.

A. Notice

CTIA urged as a central principle that location service providers **inform the customer** about the specific location information collection and use practices *before* any disclosure or use of location information takes place. By “collection,” CTIA explained that it meant the acquisition of location information other than that used to complete a call or provide a subscriber access to a network.³⁵ This exception is needed because most wireless systems routinely monitor a user’s rough location (i.e., the nearest cell site) and use this information as

³³ *Id.*

³⁴ *See e.g.*, Comments of CDT at 6 (citations omitted); Sprint PCS Comments at 2; Comments of XNX Public Trust Organization at 1.

³⁵ CTIA Petition at 9, n.22.

an integral part of completing wireless calls. It is also a means by which carriers properly bill for services. This is not a “collection” activity as contemplated by CTIA in its Petition.³⁶

There was no controversy in the Comments regarding the concept that service providers give customers notice of their information collection practices.³⁷ As Sprint PCS stated in its comments: “Notice is the most fundamental of all principles because, without notice, a consumer cannot make an informed decision as to whether (and to what extent) to disclose personal information.”³⁸

CTIA pointed out in its Petition that there were several ways in which a service provider could inform a customer about its location information practices. To name a few, CTIA suggested that notification could be included in a service agreement prior to the commencement of services or the provider could describe its policies in electronic mail, on a web site, or in a letter sent to subscribers.³⁹ Verizon Wireless advises the Commission that it

³⁶ Similarly, the Wireless Location Industry Association urges that there is no collection activity when the information collected is not directly linked to a customer identity. Comments of the Wireless Location Industry Association at 6. WLIA provides the example of aggregation of signals to determine the general concentration of wireless activity along a highway. *Id.* CTIA concurs and notes that Section 222(c)(3) explicitly provides that such aggregate information from which any individual identities are removed is not confidential.

³⁷ See e.g., Comments of AT&T Wireless at 4 (“informing customers about the collection and use of location information for enhanced location services will aid consumers.”); Comments of Cingular Wireless at 2 (“Cingular agrees that notice should be a fundamental obligation.”); Comments of the Direct Marketing Association at 2 (DMA’s Privacy Promise to American Consumers includes providing notice); Comments of Location Privacy Association at 3 (“Prior notice . . . is essential for subscribers.”); Comments of the Rural Telecommunications Group at 3 (“[L]ocation service providers must give the customer fair, obvious notice.”).

³⁸ Sprint PCS Comments at 11.

³⁹ CTIA Petition at 9.

already informs customers about its privacy policies through “bill messages, web site information, and advertising.”⁴⁰

CTIA’s main concern was to ensure that the Commission appreciated the fact that notice must fit the circumstances. Accordingly, CTIA urged that it was not necessary for the Commission to prescribe a uniform method of notice and this position has been supported by the Comments.⁴¹

B. Consent

CTIA’s proposal regarding customer consent generated some confusion.⁴² CTIA intended to make clear that *notice* precedes collection while *consent* precedes use or disclosure.⁴³ However, the Petition later appeared to require consent “prior to any collection activity other than those specific exceptions under Sections 222(d)&(f).”⁴⁴ Quite clearly, Section 222(f) requires a customer’s express prior authorization only to use or disclose, not collect, location information.

Apart from this ambiguity, there was widespread support for a flexible and broad interpretation of the authorization requirements of Section 222. As CTIA noted in its Petition, express authorization could be made in written, oral, electronic or other form under the proposed principles so long as it manifestly evidenced the customer’s desire to participate

⁴⁰ Comments of Verizon Wireless at 5.

⁴¹ CTIA Petition at 9, n. 23. *See also* Sprint PCS Comments at 11 (inappropriate for government to “micromanage details of the notice).

⁴² Comments of Cingular Wireless LLC at 3, n. 6; Comments of Leap Wireless International, Inc., at 3-4.

⁴³ CTIA Petition at 9.

⁴⁴ CTIA Petition at 9.

in the location service or transaction.⁴⁵ CTIA suggested that there were many ways a service provider should be able to satisfy the consent requirement, ranging from signed service agreements to web site subscriptions or “clickwrap” agreements to user signaling on a handset or PDA.⁴⁶

Commenters agreed with this proposition.⁴⁷ AT&T Wireless “strongly support[ed] CTIA’s flexible approach to obtaining customer consent.”⁴⁸ Leap Wireless “supports a flexible regime that allows a customer to grant consent in a variety of ways and through multiple channels.”⁴⁹ The two members of the Wireless Privacy Association – Airbiquity and QUALCOMM -- point to their technology-based consent system where the customer actually activates a feature in the handset to “opt in” to a location-based service or transaction.⁵⁰ SiRF Technology, which sells chipsets and modules to manufacturers, “enthusiastically” supported CTIA’s proposals and provided the Commission with a broad ranging discussion of the

⁴⁵ CTIA Petition at 10.

⁴⁶ *Id.*

⁴⁷ None of the commenters addressed the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”). Pub. L. No. 106-229, 114 Stat. 464 (2000). Under the E-SIGN Act, an “electronic signature” is “an electronic sound, symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” This is a broad definition and seemingly permits a consumer to manifest express authorization by diverse means such as telephonic keypad agreements (*e.g.*, “press 9 to agree”). Most important, a contract or other record may not be denied legal effect because it is in electronic form nor may a contract be denied legal effect solely because an electronic signature was used in its formation. Thus, it would seem that the Commission, to be in step with E-Sign, must permit a flexible array of means to express authorization but may not require a writing alone.

⁴⁸ Comments of AT&T Wireless at 5.

⁴⁹ Comments of Leap Wireless International, Inc., at 5.

⁵⁰ Comments of the Wireless Location Association at 5.

different circumstances and forms of consent that might be faced by service providers and consumers.⁵¹

Commenters also agreed that consent may be express yet implicit in a transaction such as when a wireless subscriber calls a location-based concierge service seeking driving directions. However, as some pointed out in the Comments, the consent, though implicit, extends only to the use of location information for that particular transaction and would not authorize any other use or disclosure without further approval by the customer.⁵² In the end, as CTIA urged in its Petition and the Comments support, the Commission's concern must be that the customer's consent be made manifest and express prior to the use or disclosure of the location information.⁵³

C. Security and Integrity

In its Petition, CTIA urged that location services providers be required to maintain any location information collected securely.⁵⁴ The systems employed by the location services provider should protect the location information from both unauthorized access and

⁵¹ Comments of SiRF Technology at 6-8.

⁵² The CTIA Petition referred to the Memorandum Opinion for John C. Keeney, Acting Assistant Attorney General, Criminal Division, from Richard L. Shiffrin, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, (Sept. 10, 1996)(filed in CC Docket 94-102)("the caller, by dialing 911, has impliedly consented to such disclosure") for support. SiRF Technology offered a similar example in its Comments at 7.

⁵³ Some Commenters assert that the Commission should recognize that location information is the property of the customer, not the carrier. Comments of SiRF Technology at 8; Comments of the Location Privacy Association at 4. CTIA believes it would be unwise and that it is unnecessary to address this thorny issue. To illustrate just one of the brambles: if location information is the property of the customer and a reasonable expectation of privacy attaches to it, then the standards of the Fourth Amendment surely apply and the government may not search or seize such information without probable cause. This is an issue on which neither Congress nor the courts have opined and neither should the Commission.

⁵⁴ CTIA Petition at 10.

disclosures to third parties. Because service providers generally treat customer information as a valuable asset and trade secret, they share the consumer's interest in safeguarding and protecting the information. Thus, this principle is without controversy.

Cingular Wireless agrees and emphasizes in its comments that a safe harbor rule is desirable to protect a service provider from liability when it has exercised reasonable care in its security systems.⁵⁵ Verizon explained that its existing procedures require that confidential information be securely stored.⁵⁶ Accordingly, the Commission should include a general requirement for location privacy such that if a service provider collects and uses location information, that it maintain it in a secure fashion.

D. Technology Neutral Principles

The Comments were in complete agreement with CTIA's observation in its Petition that "[n]either a company's privacy practices nor a consumer's privacy expectations should be determined by the nature of the location technology."⁵⁷ There was broad support privacy principles based upon the premise of technology neutrality.

The Comments revealed that innovative technology solutions to privacy are at hand. Grayson Wireless, for example, detailed the privacy features of its network-based system known as Geomatrix®, which "is designed to maintain the privacy of wireless callers and to remain under the control of wireless carriers."⁵⁸ The Location Privacy Association describes the handset-based solutions its members provide.⁵⁹

⁵⁵ Comments of Cingular Wireless LLC at 4.

⁵⁶ Comments of Verizon Wireless at 6.

⁵⁷ CTIA Petition at 11.

⁵⁸ Comments of Grayson Wireless at 3.

⁵⁹ Comments of the Location Privacy Association at 4-5.

No doubt, all of these technology achievements reflect the vibrancy and effectiveness of the market in responding to consumer needs. CTIA has proposed rules that will ensure a level playing field so that one technology does not have an unfair competitive advantage over another based on an arbitrary regulatory classification. To best serve the public interest, the Commission's rules should encourage continued innovation and take care to avoid regulatory "lock in" of any one technology.

E. Access

CTIA acknowledged in its Petition that fair information practices generally include an "access" component to ensure that information collected and used is accurate.⁶⁰ CTIA noted, however, that most location information is ephemeral and kept only to complete a transaction and so reasoned that such a requirement would not make sense.

On the other hand, CTIA suggested that if the service provider maintains location information as part of a customer profile, reasonable customer access to the profile to correct any inaccuracies, similar to the access provided to other call detail records, would be warranted.⁶¹ Sprint PCS supports a narrower view in its comments, stating that access should mean "that a customer can access his or her location preferences (e.g., default settings) currently utilized by the data collector and change those decisions to reflect the person's current requirements."⁶² The Wireless Location Industry Association urges that "the customer be provided convenient access to [personally identifiable location information] and the right to ask that it be corrected or deleted."⁶³ XNSORG observes that it is inevitable that

⁶⁰ CTIA Petition at 10, n. 25.

⁶¹ *Id.*

⁶² Sprint PCS Comments at 12.

⁶³ Comments of the Wireless Location Industry Association at 6.

location information will be commingled with other personal information in a customer's profile and that therefore an access mechanism is necessary.⁶⁴

CTIA continues to support reasonable customer access to profile information that contains location-specific attributes to ensure that it is correct and accurate. As with the other principles, however, the access requirement should not be prescriptive or inflexible. It should depend on the circumstances and follow a simple proposition – if a service provider collects, stores and intends to use location information for some future transaction, the customer should be able to access the profile to ensure that the information is accurate.

F. Enforcement

CTIA recognized in its Petition that the Federal Trade Commission ("FTC") ordinarily views enforcement or some reliable mechanism to impose sanctions for noncompliance as an essential ingredient of any self-regulatory initiative.⁶⁵ However, CTIA felt that such a provision was not necessary because once adopted, failure to implement the safe harbor principles⁶⁶ could subject location service providers to enforcement actions under the Commission's rules or those of the FTC, which treat inaccurate or misleading privacy notices as unfair and deceptive trade practices. Sprint PCS agrees and notes that the Commission's rules would permit consumers to file complaints with the Commission under Section 208 of

⁶⁴ Comments of XNS Public Trust Organization at paragraph 3.

⁶⁵ CTIA Petition at 8, n. 21.

⁶⁶ The Direct Marketing Association urges the Commission to declare the proposed rules voluntary and to recognize that other self-regulatory efforts may meet the goals of providing location information privacy. Comments of Direct Marketing Association at 5. CTIA does not believe that the rules should be voluntary at all, but does embrace in its Petition and in these Reply Comments, the notion that the Commission should not prescribe one-size-fits-all rules. Instead, as noted above, CTIA's principles are high-level and would permit organizations to promulgate guidelines embracing CTIA's principles, as the DMA in fact has done, and therefore meet the requirements of the rule.

the Communications Act.⁶⁷ Accordingly, CTIA does not believe that any specific enforcement or remedies language need be included in the rule.

⁶⁷ Sprint PCS Comments at 13.

III. CONCLUSION

The Commission should commence a rulemaking proceeding separate from its CPNI Docket to address the implementation of Section 222(h) and CTIA's proposed location privacy principles. Adopting the CTIA location information principles and allowing service providers the flexibility to implement these policy prescriptions will have the dual benefit of assuring consumers that location information will be guarded while new and exciting location services and applications are developed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margot F. Bester of Perkins Coie LLP, hereby certify that on this 24th day of April 2001, I caused copies of the foregoing Reply Comments of the Cellular Telecommunications & Internet Association on Its Petition for a Rulemaking to Establish Fair Location Information Practices to be sent by hand delivery to the following:

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